IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3001 OF 2006.

1. Mr. Siddarth Rajiv Gupta
2. Mr. Rajiv Nayan Gupta
3. Mrs. Madhulika Nayan Gupta. .. Applicants.

V/s

State of Maharashtra & Ors. .. Respondent.

Mr. Shirish Gupte with Mr. Mihir Gheewala for the applicants.

Mr. P.S. Hingorani, A.P.P.for the State.
Mr. Vaibhav Bagade for orignal complainant.

CORAM : S.C. DHARMADHIKARI, J.
DATE : 7TH SEPTEMBER, 2006.

P.C.

. The Applicants are applying for Anticipatory bail as they apprehend arrest in connection with CR.No. 328 of 2006 registered with Oshiwara Police Station alleging offences punishable under Section 498A, 423, 504, 506, 465, 467, 471, 420 r/w 34 of Indian Penal Code.

2. Their anticipatory bail application was rejected by the learned Principal Judge, City Civil and Sessions Court, Mumbai on 7th August, 2006.

3. Shri Gupte, learned Senior Counsel appearing for the applicants submits that the first applicant is the husband, whereas the applicant Nos.2 and 3 are the father-in-law and brother-in-law of the original complainant-wife.

4. He submits that the first applicant while studying for his MBA, some time in the month of September, 2003 met the complainant. They fell in love sometime in February, 2004. The applicant No.1 and his family members are educated, modern in out-look and well placed in life. After both families met each other in May, 2004 and approved the match, the marriage was solemnised.

5. After their marriage on 23rd November, 2004 which was according to Mr. Gupte took place in a Five Star Hotel in Mumbai. The married couple proceeded for their Honeymoon to Goa.

6. Mr. Gupte thereafter invited my attention to the first statement made before the Social Service Branch of Police by the complainant-wife. In his submission, the allegation appears to be that as a pre

condition for consummation of the marriage, a sum of Rs. 20 lakhs was demanded from the family members of the original complainant-wife purportedly to furnish a flat at Malad, Mumbai which was to be given to the newly married couple. He submits that the photographs taken at the honeymoon belie the version that the marriage was not consummated because of any demand for money as alleged. The allegations appear to be out of frustration for non consummation of the marriage. He further submits that the family members are such well placed people having their independent business and possessing valuable properties that it is unbelievable that they will stoop to the level of demanding a sum for furnishing their own house. He submits that the original complainant has thereafter improved her version and in that context invited my attention to Exh. "A" to this application, so also the statement recorded by the police while registering the FIR. He has also contended that all the articles which were allegedly handed over at the time of solemnisation of marriage including jewellery have been listed item wise and handed over to the original complainant-wife. He then contends that the allegations in the FIR are such that it would not be possible to believe the version of the complainant-wife.

He submits that the original complainant wife has gone to the extent of taking away articles which were of daily use. As far as the allegations about the locker at UTI Bank, Goregaon Branch is concerned and the amount withdrawn therefrom, Mr. Gupte submits that the locker was being operated as it was in the joint name of both first applicant and the original complainant-wife. That it was so operated is clear from the statement of one Mrs. Uttara Manish Sawant, who is employee of the UTI Bank at the said branch.

7. In any event and assuming that the allegations are serious in nature, yet, the Court must making a distinction between harassment and ill-treatment on account of marital discord and a demand of Dowry. He submits that all such accusations and allegations may be after thought and have to be viewed with circumspection when all family members including brother-in-laws and their wives are sought to be roped in. In this behalf he relied upon the decision of the Supreme Court reported in 2005 SCC (Criminal) 1473. He has pointed out that the Supreme Court has cautioned all concerned and has also emphasised the fact that Section 304B and Section 498(A) of IPC deal with the two distinct

offences. He submits that the object of Section 498A is to combat menace of dowry death and cruelty.

8. On the other hand, Mr. Hingorani, the learned A.P.P. has invited my attention to the FIR and has contended that the same has to be read as a whole and at this stage when the offences alleged are serious and investigations are in progress, this is not a stage for entertaining the application. He submits that the learned Principal Judge was right in his prima facie conclusion that the ingredients of Section 438 of Cr.P.C. in this case are not satisfied.

9. I have also allowed the original complainant to intervene at an earlier stage and she has filed a compilation so also grounds raised before the Sessions Court, while opposing the application.

10. The offences alleged in this case are punishable under Section 498-A and other sections of the Indian Penal Code, so also under sections 3 and 4 of the Dowry Prohibition Act. The complainant-wife has specifically alleged that the applicants have repeatedly harassed her and treated her with cruelty, both mentally and

physically for fulfilling their demand of payment of Rs. 20 lakhs, which were to be paid by the family of the wife. They have taken away, after abusing and threatening as also beating her the stridhan, jewellery and other articles. She has also alleged that without her consent the money in the joint account has been withdrawn. She has alleged that the amount has been withdrawn after her signature is forged and somebody else accompanied her husband and impersonated as the complainant-wife.

11. The statement recorded then proceeds basis that the applicant No.1 and the original complainant-wife's marriage was solemnised after the families met. It was projected that the first applicant is a person who is well placed in life and extremely talented so also with clean habits. The narration of the events before, after and at the solemnisation of the marriage would reveal that, prima facie, the amount was demanded. It is true that some amount and articles are now returned but the learned A.P.P. points out that still items and articles worth lakhs of rupees are to be traced and recovered. It is of little consequence that after the FIR was registered and investigations commenced apprehending

arrest, the Applicants proceeded to return some articles and also attended the concerned police station. Merely because they have done so during pendency of their application before the Sessions Judge and grant of interim protection therein, does not mean that at this stage the allegations which are indeed serious in nature have to be discarded.

12. The original complainant has narrated the events month and date wise till such time as she was forced to leave the matrimonial home. Even explanation is offered by her with regard to the non consummation of marriage. A serious allegation is levelled by her against the husband pertaining to his drinking habits. She has set out details regarding the demand for money at every family gathering and function. It is no doubt true that the first applicant’s petition before the Family Court is pending. It would not be proper therefore, to go into the allegations with regard to the non consummation of marriage.

13. At this stage, it is not for me to decide as to whether the materials placed deserve to be accepted in toto or the version is not supported at all. The

evedentiary value of the statements and other materials has to be decided at an appropriate stage. The parameters of considering the application for anticipatory bail are well settled.

14. A perusal of the entire FIR and the statement of the complainant-wife does not demonstrate that the allegations are patently false or malafide or that no offence at all is disclosed under the aforesaid provisions. It is not for me, at this stage to enter into the controversy as to whether the statement of the wife discloses offences punishable under Section 498A r/w relevant provisions of Dowry Prohibition Act or any lesser offence. Similarly, whether the joint account has been operated all the time jointly or the amounts were withdrawn therefrom unilaterally is again something which would have to be established by leading cogent and satisfactory evidence. At this prima facie stage, whether the offence of forgery and other offences alleged in the FIR have been proved or not is not some thing for me to decide when the investigations are in progress and the offences are serious. The version of the wife prima facie needs to be accepted, hence, it is not a fit case for enlarging applicant Nos. 1 and 2 on

pre- arrest bail. I cannot be unmindful of the seriousness of the allegation of demand of dowry when its menace is increasing and ruining the sanctity of marriage. Cruelty both physical and mental arising from such demand is responsible for ending marital relations. This is also a disturbing feature in affluent sections of society. Therefore, the caution sounded by Hon'ble Supreme Court and the need to curb the menace is a balancing act which must be, and I am sure, will be performed at an appropriate stage.

15. However, as far as applicant No.3 is concerned, she is a lady and mother-in-law of the original complainant. Although allegations against her are serious, she being a house wife and residing in Mumbai so also cooperating in the investigations, it would not be fair to allow her custodial interrogation. At the prima facie stage even she can be detained in custody, however, considering the fact that the law confers a discretion to be exercised in favour of a woman accused ultimately and further by subjecting her to a condition of attendance as and when summoned in this case, she can be protected.

16. Hence, following order:-

i) The application, so far as applicant Nos. 1 and 2 stands rejected.

ii) The application of applicant No. 3 is granted and in the event of the arrest of the applicant No.3 in connection with C.R. No. 328 of 2006 registered with Oshiwara Police Station, the applicant No.3 shall be enlarged on bail in the sum of Rs. 25,000/- with one or two sureties in the like amount.

iii) The bail is granted subject to condition that applicant No.3 shall attend Oshiwara Police station as and when summoned. She will also surrender her passport to the Investigating Officer.

iii) Bail is granted subject to condition that the applicant No.3 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against her so as to dissuade him from disclosing such facts to the Court or to the police officer/investigating agency. The applicant No.3 shall not tamper with the prosecution

evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the applicant No.3 only till charge sheet is filed. Thereafter, she will be free to apply to the appropriate Court for appropriate relief.

vi) Needless to state that in all such matters lengthy orders on anticipatory bail applications have their own consequences and may affect the out come of the main proceeding or applicant being enlarged on regular bail. Hence, nothing said either by me or by Principle Judge shall influence the Court below while trying the case as all observations are prima facie in nature similarly, if at a later stage, an application for regular bail, in so far as offences which are triable by the Magistrate, is preferred before him, the learned Magistrate may pass such orders thereon as are permissible in law and uninfluenced by rejection of the anticipatory bail application.

vii) At the request of shri Gupte, the applicant Nos.1 and 2 are granted time till 14th September,2006 to surrender before Investigating Officer.

viii) Application is disposed of in above terms.

ix) The parties to act upon an authenticated copy of this order.

(S.C. DHARMADHIKARI, J.)